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**BY WEBSITE (<http://sers.fec.gov/fosers/>)**

Federal Election Commission  
Office of the Commission Secretary  
1050 First Street, NE  
Washington, DC 20463

**Re: Supplemental Comments on the FEC’s Technological  
Modernization Rulemaking**

Dear Commissioners:

On behalf of CTIA, we are pleased to submit these comments in response to the Federal Election Commission’s request for additional public input regarding the Commission’s ongoing Technological Modernization rulemaking proceeding.<sup>1</sup>

**INTRODUCTION**

CTIA ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow.

CTIA remains encouraged by the Commission’s decision to undertake a rulemaking in this area. The need for modernized FEC regulations is real. Technology has evolved significantly since 2016 when the Commission previously solicited comments in this proceeding,<sup>2</sup> and exponentially since the Commission’s last major rulemaking on this issue in 2006.<sup>3</sup> It is imperative that the Commission’s regulatory framework keep pace with technological advances.

It is equally vital that any modernization effort foster – rather than inhibit – innovation. “Over the last [15 years], the Internet has had a profound democratizing effect on the political process and

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<sup>1</sup> See Technological Modernization, 87 Fed. Reg. 54,915 (Sept. 8, 2022).

<sup>2</sup> See Technological Modernization, 81 Fed. Reg. 76,416 (Nov. 2, 2016).

<sup>3</sup> See Internet Communications, 71 Fed. Reg. 18,589 (Apr. 12, 2006).

has led to increased participation in that process.”<sup>4</sup> Indeed, as one commissioner recently observed:

For modern campaigns, the internet isn’t optional. Fundraising, advertising, and messaging all depend on a candidate’s ability to directly reach donors, voters, and supporters online. Campaign websites, email lists, digital ads, and social media profiles have become critical tools for electoral success. What’s more, today most Americans consume their news, including political news, through the internet and social media.<sup>5</sup>

Past commissioners responded to these realities by treading carefully when addressing new technologies. This, in turn, allowed the Internet and related technologies to flourish as a place for democratic discourse. As a result, the “Commission has been praised for its careful approach to regulating online political activity.”<sup>6</sup> We urge the Commission to take a similar approach here.

Finally, the apparent bipartisan interest in this rulemaking presents an opportunity for the Commission to work collaboratively to reach consensus. Indeed, Senator Amy Klobuchar recently urged commissioners to “figure out ways to work across party lines and find bipartisan agreement” on issues like “internet regulations.”<sup>7</sup> Promulgating an updated regulatory framework to account for technological changes does not appear to be fraught with the legal and political controversy attendant to some other matters within the Commission’s jurisdiction. Accordingly, we believe modernized regulations are a worthy and attainable goal in advance of the 2024 election.

### **RESPONSE TO THE COMMISSION’S REQUEST FOR SUPPLEMENTAL INFORMATION**

In its September 8, 2022 notice, the Commission raised several questions regarding direct carrier billing (“DCB”). *First*, the Commission asked: “[H]ow prevalent is direct carrier billing in processing payments generally, and contributions to political committees in particular?”

CTIA’s 2016 comments explained that DCB is a process that allows users to initiate monetary transactions on their wireless phones and have the charges added to their wireless bills for payment. Originally, DCB was limited to purchases of wireless goods and services like ring tones for users’ wireless phones. DCB then evolved into, among other things, a fundraising tool that created new opportunities for charities and other non-profit organizations to solicit support from donors. Today, many non-political organizations use DCB for fundraising. More broadly,

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<sup>4</sup> *Statement of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen Encouraging Public Comment on the Commission’s Treatment of Online Political Activity*, Oct. 29, 2014, [https://www.fec.gov/resources/about-fec/commissioners/statements/Goodman\\_Hunter\\_Petersen-Statement\\_Encouraging\\_Public\\_Comment.pdf](https://www.fec.gov/resources/about-fec/commissioners/statements/Goodman_Hunter_Petersen-Statement_Encouraging_Public_Comment.pdf) (“*Joint Statement*”).

<sup>5</sup> Statement of Reasons of Commissioner Sean J. Cooksey, Matter Under Review 7821 *et al.* (Twitter, Inc.), Sept. 13, 2021.

<sup>6</sup> *Joint Statement*.

<sup>7</sup> 168 Cong. Rec. S2657 (daily ed. May 24, 2022) (statement on the nomination of Dara Lindenbaum).

experts estimate that the total market for DCB-related transactions will be approximately \$54 billion this year, and potentially in excess of \$74 billion by 2026.<sup>8</sup>

At the time of its 2016 comments, CTIA and its members believed that political committees would also integrate DCB into their fundraising plans. However, the near-ubiquity of smartphones and advances in mobile technology have caused a shift in mobile fundraising by political committees. Many campaigns, for example, now send text messages that include mobile-friendly links to fundraising websites like ActBlue or WinRed that process political contributions by credit card. This has obviated the need to charge political contributions to a wireless user's bill and to process the contributions by DCB.

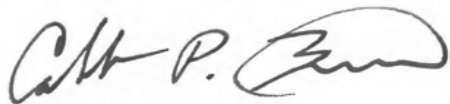
*Second*, and notwithstanding the foregoing, the Commission asked how its proposal to treat a contribution as "made" on the date "the contributor authorizes the transaction" would affect political contributions by DCB. The mechanics of DCB have not changed since 2016, so this proposal presents the same problems that CTIA identified in its 2016 comments. That is, DCB charges are added to a wireless user's bill at the conclusion of the billing period, which could be thirty days after the user authorizes a transaction. Then, the user typically has thirty days to pay the bill, and only upon payment by the user will the wireless carrier forward the contribution to the political committee. However, federal law requires political contributions to be forwarded to recipient political committees within 10 or 30 days – depending on the contribution amount – of when a contribution is "made." If the Commission interprets that to be the date a user authorizes a contribution, the Commission's interpretation will preclude wireless carriers from complying with the 10/30-day forwarding requirement in the ordinary course of business.

It is true that the Commission addressed and attempted to overcome this issue when it approved a "factoring" arrangement whereby a political committee sells its accounts receivable to a third-party vendor in exchange for an immediate share, or "factor," of the full amount of the contribution owed to the committee.<sup>9</sup> If the Commission's intention is to continue to allow DCB pursuant to this previously approved process, it should explicitly state so in the Explanation and Justification of any final rule.

### **CONCLUSION**

We appreciate the opportunity to continue to participate in this rulemaking proceeding and look forward to the Commission's consideration and resolution of these important issues.

Respectfully Submitted,



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<sup>8</sup> Press Release, *Carrier Billing Spend for Digital Goods to Exceed \$74 Billion in 2026; Dominated by Digital Games Spend*, Juniper Research, May 17, 2022, <https://www.juniperresearch.com/pressreleases/carrier-billing-spend-for-digital-goods-to-exceed>.

<sup>9</sup> See FEC Adv. Op. 2012-17 (m-Qube I) (June 11, 2012)